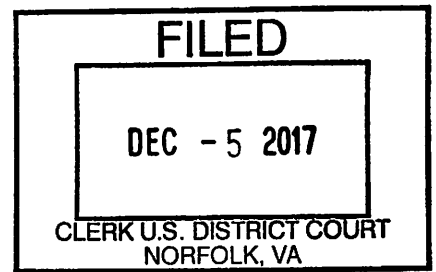


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



JOHN TAYLOR TYER, #54606-056,

Petitioner,

v.

Civil No. 2:17cv294

ERIC WILSON, Warden,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2241. The Petitioner seeks a resentencing hearing or an evidentiary hearing to establish Petitioner's actual innocence.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Report was filed on November 2, 2017, recommending dismissal of the Petition because Petitioner raised similar claims in a motion for relief before the sentencing court, and because his Petition falls outside the narrow range of claims that may be brought by federal prisoners under the so-called "savings provision" of 28 U.S.C. § 2255(e). ECF No. 10.


By copy of the report, each party was advised of the right to file written objections to the findings and recommendations. On November 15, 2017, the Court received Petitioner's Objections to the Magistrate Judge's Report and Recommendation. ECF No. 11. The Respondent has filed no response to the Objections and the time for doing so has now expired.

The Court has reviewed the record *de novo* and has examined the objections filed by the Petitioner to the Magistrate Judge's Report. The Court adopts and approves the findings and recommendations set forth in the Report of the United States Magistrate Judge filed November 2, 2017. Accordingly, it is ORDERED that the petition (ECF No. 1) is DENIED and DISMISSED and Judgment shall be entered in favor of the Respondent. Petitioner's Objections (ECF No. 11) are OVERRULED.

Petitioner may appeal from the Judgment entered pursuant to this Final Order by filing a Notice of Appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within sixty days from the date of entry of such Judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," and this Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall please mail a copy of this Final Order to Petitioner and provide an electronic copy of the Final Order to counsel of record for Respondent.



Arenda L. Wright Allen
United States District Judge

Norfolk, Virginia

12.4 2017